IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3022 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL RAHMAN ABDUS SAMAD SHAIKH
Versus
AHMEDABAD MUNICIPAL CORPORATION

Appearance:
1. Special Civil Application No. 3022 of 2003
MR MA KHARADI for Petitioner No. 1
MR MAULIN R RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 19/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

Heard Mr. Kharadi, learned advocate, who appeared for the petitioner and Mr. Maulin Raval, learned advocate for the respondent Ahmedabad Municipal Corporation. This petition is pending for consideration in view of the order passed by the court on 24th March, 2003 by which, the court has issued notice to the respondent returnable on 29th March, 2003 as well as the court had also issued notice as to interim relief by permitting direct service. Thereafter, the matter was adjourned from time to time and as per order dated 29th March, 2003, considering the request made by Mr. Raval appearing for the respondent Corporation for filing reply affidavit, matter was adjourned to 9.4.2003. Thereafter, as per order passed by the learned Chief Justice on the submission made by the office on 9.8.2004, the learned Chief Justice has directed the office to place this matter before us for consideration.

2. The matter was before us on 16.8.2004 and considering the request of Mr. Raval, we have adjourned the matter for hearing today to enable him to get record of the case from the Corporation as in spite of the request made earlier for filing affidavit in reply, Corporation has not filed any affidavit in this proceedings.

3. Considering the submissions made before us, though the affidavit is not filed by the Corporation, however, the officers from the Corporation from the concerned department is present with the case file and accordingly, by consent of the counsel appearing in the matter, Rule. Mr. Raval, learned advocate waives service of Rule on behalf of the respondent Corporation and with the consent of the advocates for the parties, the Rule is fixed forthwith.

4. The petitioner has while filing this petition challenged the action of the respondent Corporation and prayed for issuance of writ of prohibition or any appropriate writ, order or direction restraining the respondents from taken any illegal or unconstitutional action of recovering the so called tax dues without issuing Demand Notice has merely by issuing letter to the petitioner by the Ward Inspector informed the petitioner that he should approach the Ward Inspector Bharatbhai Parmar between 3 to 5 PM in Khadiya Tax Division of Ahmedabad Municipal Corporation, Nr. Panchkuva Gate and he was called upon to pay tax for the year 2000-2001

outstanding for sum of Rs.70,496=00 + interest. The petitioner has also annexed the tax bill issued by the Corporation for the year 1993-94 as well as the tax bill for the year 2002-2003 for which the petitioner was required to pay the tax by September, 20, 2002 and the tax bill pertaining to godown of the petitioner and the tax assessment at Rs.1416=00 and the other bill, which were annexed collectively to Annexure - B & C to this petition. It is the case of the petitioner supported with an affidavit of the petitioner dated 13th March, 2003 in para 3.1 that on March 10, 2003, an employee of the respondent Corporation approached the petitioner with a hand written chit showing the alleged arrears of tax payable by the petitioner for year 2000-2001 to the tune of Rs.70,496=00 + interest. The said chit received by the petitioner is also annexed by the petitioner at Annexure - D to this petition. In para 3, he has named the person, who was employee of the Corporation, who has handed over the chit, who posed before the petitioner that he is employee of the Corporation and is working under Ward Inspector Shri Bharatbhai Khadkhad. At the time of handing over the chit one Shri Gulam Dastagir was also present and the employee of the Corporation has warned the petitioner that if the petitioner failed to pay the amount recorded in the chit within 24 hrs., then the petitioner's premises will be sealed. The petitioner has accordingly approached this court for restraining the respondent by using such method by way of recovering of property tax and the petitioner has also prayed that respondent authority be restrained from effecting any coercive recovery from the petitioner without showing the proper assessment.

5. We are not require to examine in the present case that whether the petitioner has paid the tax amount to the Corporation or not and what amount of tax is outstanding from the petitioner. Mr. Maulin Raval has produced before us the extract of the file maintained by the Corporation in respect of the property of the petitioner and document maintained by the Corporation in respect of the form for demand certificate for the year 2004-2005, in which, the name of the present petitioner is shown as a person to be liable to pay tax, who is also occupier of the property situated in Final Plot No. 606/13/12 and a description about the property is also highlighted. It is the case of the Corporation that the Corporation has issued bill to the petitioner and till date, there is an outstanding amount by way of tax to the petitioner.

6. As averred by the petitioner about the employee

of the Corporation has approached the petitioner and handed over chit for which, the petitioner was asked to contact the Ward Inspector between 3 to 5 PM and he was required to pay a tax of Rs.70496 + interest for the year 2000-2001, which was outstanding tax. In our view, such method adopted by the Corporation is not permissible in law. The Corporation is entitled to recover the tax from the citizen in a method prescribed as per Rules and Regulations and by issuing bills. Meaning thereby, the Corporation is require to follow the requirement of recovery of property tax as per Rules and if in spite of issuance of notice, no steps were taken by paying tax, the Corporation is require to proceed further in accordance with law. Accordingly, the method adopted by the Corporation by issuing chit by directing the citizen to contact Ward Inspector and to make payment of tax is required to be condemned. This petition is filed supported with an affidavit of the petitioner and petitioner has also annexed the copy of the chit received by him and Mr. Raval has also on ascertaining from the officers, who is present, informed us that in tax department at Khadia, Bharatbhai Parmar is working as a Ward Inspector. In our view, the practise adopted by the Corporation is not proper and though the time was granted earlier, no reply affidavit is filed by denying the averments made in the petition and accordingly, the averments made by the petitioner is required to be accepted. The method adopted by the Corporation / Ward Inspector is accordingly not proper and further not in accordance with law and respondent is hereby restrained to adopt such method for recovery of house proper tax from the citizen. Accordingly, the Corporation is directed to issue proper tax bill, if it is not issued to the petitioner and informed the petitioner about the tax bill payable by him as per Rule and the Corporation is accordingly, directed to recover the tax from the petitioner. With this observations, petition is disposed off. Rule is discharged with no costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
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